

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

JEREMIAH PARKER, and EP, a Minor,)
by and through his Next Friend,)
TIFFANEY WHITT; and NP, a Minor,)
by and through his Next Friend,)
TIFFANEY WHITT; and ZP, a Minor,)
by and through his Next Friend,)
TIFFANEY WHITT; and IP, a Minor,)
by and through his Next Friend,)
TIFFANEY WHITT; and MP1, a Minor,)
by and through his Next Friend;)
TIFFANEY WHITT; and MP2, a Minor,)
by and through his Next Friend,)
TIFFANEY WHITT,)
)

Plaintiffs,

vs.

KEARNEY SCHOOL DISTRICT; and)
DURHAM SCHOOL SERVICES, L.P.,)
)
Defendants.)

Case No. 4:22-cv-00454-GAF

**DEFENDANT DURHAM SCHOOL SERVICES, L.P.'s MOTION TO DISMISS
PLAINTIFFS' CLAIMS UNDER SECTION 1981 FOR FAILURE TO STATE A CLAIM**

Defendant Durham School Services, L.P. ("Durham") respectfully moves to dismiss Plaintiffs' Complaint under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. In support of this Motion to Dismiss, Durham provides the following grounds, as further discussed in its Memorandum in Support filed contemporaneously herewith:

Plaintiffs' claims asserted under 42 U.S.C. § 1981 must be dismissed for failure to state a claim because Plaintiffs are neither parties nor rightsholders under the contract identified in Plaintiffs' Complaint. As the Supreme Court held in *Domino's Pizza, Inc. v. McDonald*, 546 U.S. 470, 476, 126 S. Ct. 1246, 163 L. Ed. 2d 1069 (2006), "Any claim brought under § 1981 must

initially identify an impaired ‘contractual relationship,’ under § 1981(b), under which the plaintiff has rights.” *See also FCS Advisors, LLC v. Missouri*, 929 F.3d 618 (8th Cir. 2019) (rejecting a third-party’s attempt to enforce a contract under § 1981).

Plaintiffs’ claims under Section 1981 must also be dismissed because Plaintiffs fail to and cannot assert facts to support the requisite element that Defendant Durham intentionally discriminated against Plaintiffs. Rather, Plaintiffs allege an unidentified employee of Durham failed to stop discriminatory harassment perpetrated by unidentified third parties.

Wherefore, Durham respectfully requests dismissal of Plaintiffs’ Section 1981 claims asserted against Durham pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

Respectfully submitted,

DYSART TAYLOR COTTER
McMONIGLE & BRUMITT, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2022, a true copy of the foregoing document was filed via the Court's electronic filing system, which will transmit notice of said filing via electronic mail to the counsel of record as follows:

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